

ENCLOSURE 3

M200158

Affidavit for Enclosure 1 and Associated Electronic Media

GE-Hitachi Nuclear Energy Americas, LLC

AFFIDAVIT

I, **Michelle P. Catts**, state as follows:

- (1) I am Senior Vice President, Nuclear Programs, GE-Hitachi Nuclear Energy Americas, LLC (GEH), and have been delegated the function of reviewing the information described in paragraph (2) which is sought to be withheld and have been authorized to apply for its withholding.
- (2) The information sought to be withheld is contained in Enclosure 1 of GEH Letter M200158, "Information Supporting Review of NEDC-33922P, BWRX-300 Containment Evaluation Method Licensing Topical Report," and the associated electronic media. All information provided in Enclosure 1 of GEH Letter M200158 is GEH proprietary information and carries the notation "GEH Proprietary Information - Non-Public," and the electronic media contains files that are entirely proprietary and is labeled with the notation "GEH Proprietary Information - Withhold in Accordance with 10 CFR 2.390," and "10 CFR Part 810," GEH requests that this information be withheld from public disclosure. Paragraph (3) of this affidavit provides the basis for the proprietary determination.
- (3) In making this application for withholding of proprietary information of which it is the owner or licensee:
 - (a) In the United States, GEH relies upon the exemption from disclosure set forth in the Freedom of Information Act ("FOIA"), 5 USC Sec. 552(b)(4), and the Trade Secrets Act, 18 USC Sec. 1905, and NRC regulations 10 CFR 9.17(a)(4), and 2.390(a)(4) for "trade secrets" (Exemption 4). The material for which exemption from disclosure is here sought also qualify under the narrower definition of "trade secret", within the meanings assigned to those terms for purposes of FOIA Exemption 4 in, respectively, Critical Mass Energy Project v. Nuclear Regulatory Commission, 975 F.2d 871 (DC Cir. 1992), and Public Citizen Health Research Group v. FDA, 704 F.2d 1280 (DC Cir. 1983).
 - (b) In Canada, GEH affirms that the information qualifies for an exemption or exclusion under the Access to Information Act (R.S.C., 1985, C. A-1), and includes proprietary information that is treated consistently as confidential.
- (4) In the United States, some examples of categories of information which fit into the definition of proprietary information in (3)(a) above are:
 - (a) Information that discloses a process, method, or apparatus, including supporting data and analyses, where prevention of its use by GEH's competitors without license from GEH constitutes a competitive economic advantage over other companies;
 - (b) Information which, if used by a competitor, would reduce his expenditure of resources or improve his competitive position in the design, manufacture, shipment, installation, assurance of quality, or licensing of a similar product;
 - (c) Information which reveals aspects of past, present, or future GEH customer-funded development plans and programs, resulting in potential products to GEH;

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- (d) In the U.S., information which discloses patentable subject matter for which it may be desirable to obtain patent protection.

The information sought to be withheld is considered to be proprietary for the reasons set forth in paragraphs (4)(a) through (4)(d) above.

- (5) In Canada, as defined in R.S.C., 1985, C. A-1, 20 (1) regarding third party information which fits into the definition of proprietary information in (3)(b) above subject to this section, the head of a government institution shall refuse to disclose any record requested under this Part that contains:

- (a) trade secrets of a third party;
- (b) financial, commercial, scientific or technical information that is confidential information supplied to a government institution by a third party and is treated consistently in a confidential manner by the third party;
- (b.1) information that is supplied in confidence to a government institution by a third party for the preparation, maintenance, testing or implementation by the government institution of emergency management plans within the meaning of section 2 of the Emergency Management Act and that concerns the vulnerability of the third party's buildings or other structures, its networks or systems, including its computer or communications networks or systems, or the methods used to protect any of those buildings, structures, networks or systems;
- (c) information the disclosure of which could reasonably be expected to result in material financial loss or gain to, or could reasonably be expected to prejudice the competitive position of, a third party; or
- (d) information the disclosure of which could reasonably be expected to interfere with contractual or other negotiations of a third party.

The information sought to be withheld is considered to be proprietary for the reasons set forth in paragraphs (5)(a) through (5)(d) above.

- (6) To address the U.S. requirements in 10 CFR 2.390(b)(4) and Canadian requirements, the information sought to be withheld is being submitted to the NRC and the Canadian Nuclear Safety Commission (CNSC) in confidence. The information is of a sort customarily held in confidence by GEH and is in fact so held. The information sought to be withheld has, to the best of my knowledge and belief, consistently been held in confidence by GEH, no public disclosure has been made, and it is not available in public sources. All disclosures to third parties including any required transmittals to the NRC and CNSC, have been made, or must be made, pursuant to regulatory provisions or proprietary agreements which provide for maintenance of the information in confidence. Its initial designation as proprietary information, and the subsequent steps taken to prevent its unauthorized disclosure, are as set forth in paragraphs (7) and (8) following.
- (7) Initial approval of proprietary treatment of a document is made by the manager of the originating component, the person most likely to be acquainted with the value and sensitivity of the information in relation to industry knowledge, or subject to the terms under which it was licensed to GEH.

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- (8) The procedure for approval of external release of such a document typically requires review by the staff manager, project manager, principal scientist or other equivalent authority, by the manager of the cognizant marketing function (or his delegate), and by the Legal Operation, for technical content, competitive effect, and determination of the accuracy of the proprietary designation. Disclosures outside GEH are limited to regulatory bodies, customers, and potential customers, and their agents, suppliers, and licensees, and others with a legitimate need for the information, and then only in accordance with appropriate regulatory provisions or proprietary agreements.
- (9) The information identified in paragraph (2) is classified as proprietary because it contains information and electronic media that contains detailed information of the type GEH considers to be proprietary in its entirety. The development of the preliminary proprietary design information for systems and components and proposed regulatory acceptance criteria for this new reactor technology was achieved at a significant cost to GEH.

The development of the evaluation process for this new reactor technology design, along with the interpretation and application of the regulatory acceptance criteria, is derived from the extensive experience database that constitutes a major GEH asset.

- (10) Public disclosure of the information sought to be withheld is likely to cause substantial harm to GEH's competitive position and foreclose or reduce the availability of profit-making opportunities. The development of this new reactor technology is part of GEH's comprehensive BWR safety and technology base, and its commercial value extends beyond the original development cost. The value of the technology base goes beyond the extensive physical database and analytical methodology and includes development of the expertise to determine and apply the appropriate evaluation process. In addition, the technology base includes the value derived from providing analyses done with NRC-approved methods and CNSC-approved methods.

The research, development, engineering, analytical, and NRC and CNSC review costs for this reactor technology comprise a substantial investment of time and money by GEH.

The precise value of the expertise to devise an evaluation process and apply the correct analytical methodology to a new reactor technology is difficult to quantify, but it clearly is substantial.

GEH's competitive advantage will be lost if its competitors are able to use the results of the GEH experience to normalize or verify their own process or if they are able to claim an equivalent understanding by demonstrating that they can arrive at the same or similar conclusions.

The value of this information to GEH would be lost if the information were disclosed to the public. Making such information available to competitors without these competitors having been required to undertake a similar expenditure of resources would unfairly provide competitors with a windfall and deprive GEH of the opportunity to exercise its competitive

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advantage to seek an adequate return on its large investment in developing this very valuable reactor technology.

- (11) The proprietary information provided is subject to the export control laws and regulations of the United States, including United States Regulations Title 10 Code of Federal Regulations (CFR) Part 810. In addition, GEH affirms compliance with the regulatory requirements of the Canadian Nuclear Non-proliferation Import and Export Control Regulations (SOR/2000-210). GEH understands that under these regulations the CNSC is obligated to not disclose, transfer, or export any Sensitive/Confidential Information it receives hereunder, or any product containing such Sensitive/Confidential Information, without the prior written permission of GEH.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on this 17th day of December 2020.



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